85-1118

Supreme Court, U.S.
FILED
DEC 10 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1985

L. CHESTER CARTER, Appellant,

v.

COMMONWEALTH OF VIRGINIA, Appellee.

ON APPEAL FROM
THE SUPREME COURT OF VIRGINIA

JURISDICTIONAL STATEMENT

L. Chester Carter
In Propria Persona
P. O. Box 84
Stony Creek, VA 23882
804-264-2440

December 30, 1985

BEST AVAILABLE COPY

HAPP

QUESTION PRESENTED

Whether Rule 1:5 of the Virginia Rules of Supreme Court and Code of Virginia are violative of the Free Speech Clause of the First Amendment of the Constitution of the United States and Freedom of Counsel of Choice in the Sixth Amendment of the Constitution of the United States when applied to a sovereign Freeman to stop him from freely exercising his religious convictions and beliefs led by the dictates of his conscience in helping his fellow man and family members and further exercising his freedom of speech and right to public assembly. There being no misrepresentation or other activity impinging on any public interest.

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L. CHESTER CARTER, Appellant,

v.

COMMONWEALTH OF VIRGINIA, Appellee.

ON APPEAL FROM
THE SUPREME COURT OF VIRGINIA

JURISDICTIONAL STATEMENT

L. Chester Carter, The Appellant, appeals from the final judgment of the Supreme Court of Virginia dated September 11, 1985, holding that rule 1:5 of the Virginia Rules of Supreme Court and of the Code of Virginia are not Constitutional as being violative of Appellant's right of free

speech guaranteed by the First Amendment of the Constitution of the United States and of Appellant's right to counsel of choice as guaranteed by the Sixth Amendment of the Constitution of the United States.

OPINIONS BELOW

The opinion of the Supreme Court of Virginia, which appears in the appendix hereto, is reported below.

The opinion of the Supreme Court of Virginia is no reversible error in the judgment complained of and the court refused the petition for appeal. The opinion of the Supreme Court of Virginia was entered on September 11, 1985.

This appeal is being docketed in this court within 90 days from the decision of the Supreme Court of Virginia. The jurisdiction of this court

is being invoked under 28 U.S.C. §1257 (2).

QUESTION PRESENTED

Whether Rule 1:5 of the Virginia Rules of Supreme Court and Code of Virginia are violative of the Free Speech Clause of the First Amendment of the Constitution of the United States and Freedom of Counsel of Choice in the Sixth Amendment of the Constitution of the United States when applied to a sovereign Freeman to stop him from freely exercising his religious convictions and beliefs led by the dictates of his conscience in helping his fellow man and family members and further exercising his freedom of speech and right to public assembly. There being no misrepresentation or other activity impinging on any public interest.

CONSTITUTIONAL PROVISIONS AND RULES

First Amendment, United States Constitution:

> Congress shall make no law respecting...religion, or prohibiting the free exercise thereof; or abridging the freedom of speech....

Article Six, United States Constitution:

> ...to have the assistance of Counsel for his defense.

Rule 1:5, Rules of Supreme Court of Virginia:

> When used in these Rules, the word "counsel" includes a partnership, a professional corporation or an association of members of the Virginia State Bar practicing under a firm name....

RAISING THE FEDERAL QUESTION

At the earliest stage of the proceedings below, the Appellant raised the issue and challenged the jurisdiction of the trial court as per Article III, Section 2 of the United States Constitution which reads, "In all Cases...in which a state shall be a party, the Supreme Court shall have original jurisdiction. The Appellant challenged jurisdiction of the court, but the court moved forward against his will and over his objection. The Appellant raised the issue and demanded counsel of his choice as per the Sixth Amendment of the Constitution of the United States but was denied same by the court and rushed forward against his will and over his objection. The Appellant raised the issue of his First Amendment rights, but to no avail as the court

found no merit to the Appellant's response and overruled all of his motions.

These same arguments were filed in a petition before the Virginia State Supreme Court, but the court denied the petition and stated it found no reversible error.

STATEMENT OF THE CASE

The Attorney General for the Commonwealth of Virginia, Gerald L. Baliles, petitioned the Sussex Circuit Court for a Writ of Quo Warranto against Appellant, who is a sovereign free man. The Attorney General rejected his oath of office by prosecuting this man for exercising his Constitutional Rights insured by the United States Constitution, and Virginia's Constitution.

The state, through her agent, Attorney General Baliles, and his agents, blatantly prosecuted the Appellant for exercising his rights under the First Amendment of the United States Constitution. The Attorney General has ignored the Appellant's rights of Freedom of Speech, Freedom of the Press and of Religion and the free exercise thereof.

The Attorney General has ignored the right of the Appellant granted in Article I, Section 12, and Section 16 of the Virginia State Constitution by bringing a Quo Warranto Proceeding against Appellant. Appellant has simply exercised his religious convictions and beliefs led by the dictates of his conscience in helping his fellow men

and family members. Appellant further exercised his freedom of speech and his right to public assembly.

On October 28, 1984, the Commonwealth of Virginia filed a petition for a Writ of Quo Warranto pursuant to §8.01-636 (2) (a) of the Code of Virginia. The petition alleged that Appellant, a sovereign free man had engaged in the unlawful practice of law in the State of Virginia in the representation of one Horace A. Jarratt, a family member of Appellant, in a legal proceeding.

On November 5, 1984, Appellant was served by a County Deputy, a Notice to appear in the Circuit Court in Sussex County on November 13, 1984. Appellant not fully understanding the meaning of the document, appeared In Propria Persona on November 13, 1984 at 1:00 p.m.

at Sussex County Circuit Court expecting a typical docket call agenda, and was faced with blatant denial of this Appellant's Rights.

Appellant was rushed to justice (sic) and forced to move forward against his will and over his objection! The Appellant, under administrative procedural matters brought before the court, demanded Counsel of Choice and was firmly denied Counsel of Choice by the court.

The Appellant was never afforded the opportunity of a jury trial, nor was he given adequate time to properly prepare his defenses. It was exactly eight days from service of process, November 5, 1984 to hearing date, November 13, 1984.

The Attorney General, along with his agents and the assistance and

observation of local attorneys of the Bar Association, did deny petitioner his Sixth Amendment Rights of the United States Constitution by bringing the Quo Warranto proceeding against this free and sovereign man. The Virginia Bar Association, with the assistance of the General Assembly, have passed statutes to deny this Citizen's Constitutional Rights under the Sixth Amendment of the Constitution of the United States. The Supreme Court of the State of Virginia does further injustice in not granting petition for a hearing in this matter.

THE QUESTIONS ARE SUBSTANTIAL

The questions as to the First and Sixth Amendments have been addressed by this court in the past and it is from the decisions rendered by this court in the past that Appellant felt correct in the actions he took.

Appellant, being a sovereign free man has never claimed an office or title nor practiced law for a Quo Warranto to be issued against him.

"A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right against the authority which makes the law on which the right depends." Kawananaka v. Polybank, 205 US 349.

The state, in issuing its Quo Warranto proceeding against this sovereign free person, lacked jurisdiction which was challenged by the Appellant and he was denied his rights as referenced in the transcript of the proceedings, page 5, line 8 and 9, and line 22 through page 7, line 6.

In the issuing of the Quo Warranto

Writ by the State, the Appellant's First Amendment Right of the United States Constitution was denied.

The Attorney General ignored the rights of the Sovereign Free Man granted by the United States Constitution, Article I (Bill of Rights):

"Congress shall make no law respecting an establishment of religion in prohibiting the free exercise thereof or abridging the freedom of speech or press or the right of the people to assemble."

In both United Mine Workers v. Illinois Bar Association, 389 US 217 and NAACP v. Button, 371 US 415 and also in Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 US 1 (1964), it was held that a state may not pass statutes prohibiting the unauthorized practice of law or to

interfere with the right to freedom of speech, secured in the First Amendment.

"Virginia undoubtedly has broad powers to regulate the practice of law within its borders; but we have had occasion in the past to recognize that in regulating the practice of law, a state cannot ignore the rights of individuals secured by the Constitution." For as we said in NAACP v. Button, Supra, 371 US, at 429, "A state cannot foreclose the exercise of Constitutional rights by mere labels." Brotherhood of Railroad Trainmen v. Virginia Bar, 377 US 1, page 6.

As in the above mentioned case, the Quo Warranto action by the state denied the Appellant his inalienable rights of the First Amendment of the United States Constitution.

Further, the state ignored the rights of the Appellant granted in Article I, Section 12 and 16 of the Virginia State Constitution in bringing Quo Warranto proceeding.

As stated in pertinent part:

Section 12: "The General Assembly shall not pass any law abridging the freedom of speech or of the press nor the right of people to assemble."

Section 16: "All men are equally intitled to the free exercise of Religion according to the dictates of conscience and that it is the mutual duty of all to practice Christian forebearance, love, and charity towards each other...."

The Tenth Amendment of the Constitution of the United States: "The powers not delegated to the United States by the Constitution, nor prohi-

bited by it to the states, are reserved to the states respectively, or to the people."

The power to abrogate the Rights mentioned herein, heretofore, has not been delegated to the United States or any State through the Constitution.

Nothing in the Constitution of the State of Virginia constitutes a delegation of power to the State to thwart and frustrate the foregoing Rights; freedom of speech, of religion, of assembly, of petitioning for redress of grievances, of due process, of right to contract, and of equal treatment under the law.

Therefore, the foregoing assumed as true, the "power" remains with the people, who are the Sovereign in this country as heretofore pointed out. Therefore, the Appellant retains the power for his choice of a spokesman in

court, "anything in the Constitution or laws of any state to the contrary notwithstanding". Regardless of Virginia's statutes or any arbitrary rule making, it cannot invalidate Appellant's natural rights protected by the Constitution. Said pretended right to "regulate" the practice of law must fall or recede when put alongside the Appellant's right to a fair trial by an impartial jury, with due process, freedom of speech, and contract, as heretofore pointed out.

It is impossible to delegate to another that which the delegator does not himself possess. Appellant does not have the right to compel the inadequate representation of another, and therefore, this Appellant is powerless to delegate such a tyrannical power to a legislature, whether or not controlled by attorneys or a Bar

Association.

To summarize the foregoing, the Tenth Amendment prohibits the State of Virginia and its courts from restricting Appellant's right for a non-attorney spokesman in court. Such power is not given the State in either the United States or State Constitutions. Therefore, in civil cases, the legislature has usurped, at the prodding of attorneys, the so-called right to institute a statute prohibiting an Appellant, in a prosecution against him by his government, from relying upon a preferred spokesman of trust and confidence. In criminal cases there is no valid reason, statute, or court ruling that can alter the fundamental right to counsel, and the courts in denying said spokesman are arbitrarily usurping Appellant's right.

The Ninth Amendment reserves all non-enumerated rights. They are not to be denied or disparaged, though not enumerated. The mention and enumeration of the Right to Counsel under the Supreme authority of the Sixth Amendment cannot be construed to deny or disparage the Right to said Counsel being a non-attorney, or a non-member of a Bar Association licensed to only plea bargain and lose.

It would appear that any decent person would have no difficulty agreeing with the above, and that any other ruling would indeed be "frivolous" and without Constitutional Authority.

As clearly stated, the Statutory Quo Warranto proceeding by the State violated not only the Virginia Constitution but was strengthened by the violation of the United States

Constitution.

The trial court clearly denied Appellant's request for Counsel of Choice; a basic fundamental right of all citizens.

In the Quo Warranto proceeding, the Appellant was asserting his right to counsel under the First, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitution.

The Sixth Amendment to the United States Constitution states:

"In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense."

Appellant asks the court to take judicial notice of the fact that many of the men who contributed to the writing or ratifying of the Constitution were attorneys, such as

John Jay, first Chief Justice of our United States Supreme Court, and John Marshall, a later Chief Justice. John Adams, James Wilson, John Blaire, and Oliver Ellsworth were among the many fine attorneys who assisted in approving the language used in our Constitution. Are we to believe that the word "Counsel" was selected by these "attorneys" with no thought whatever to its Common Law meaning of that time?

In discussing Appellant's right of counsel, the United States Supreme Court held: "...his right to be heard through his own counsel is UNQUALIFIED." Chandler v. Fretag, 348 U.S. 3.

In consulting Noah Webster's 1828 dictionary, the word "unqualified" is defined as:

"Not modified, limited, or restricted by conditions or exceptions;... (Noah Webster's First Edition of an American Dictionary of the English Language, in 1828, republished in facsimile edition by Foundation for American Christian Education, San Francisco, California, Second Edition, 1980).

It is undeniable that the explicit use of the word "counsel" in the Sixth Amendment was intended to mean someone other than an attorney, as well as an attorney. Appellant had repeatedly demanded access to counsel pursuant to his rights under the Sixth Amendment to the United States Constitution.

"Laymen ...in and out of prison--should be allowed to act as "next friend" to any person in the preparation of any paper or document or claim,so long as he does not hold himself

out as practicing law or as being a member of the Bar...the cooperation and help of laymen, as well as lawyers, is necessary if the right of reasonable access to the courts is to be available to the indigent among us." Johnson v. Avery, 393 US 483. This right of access to counsel was completely denied.

Appellant also asks the court to take judicial notice of the use of the word "COUNSEL" in the 17th century:

"...and in all courts persons of all persuasions (sic) may freely appear in their own way, and according to their own manner and there plead their own causes themselves, or if unable, by their friends..." (Emphasis added.) Fundamental Constitution for the Province of East Jersey (1683).

To have a "friend" act as a counsel was a Common Law Right and was recognized as such in the Bill of Rights when the word "counsel" was used instead of "attorney".

"The language of the Constitution cannot be interpreted safely, except by reference to Common Law and to British institutions as they were when the instrument was framed and adopted. The statesmen and lawyers of the convention who submitted it to the ratification of conventions of the thirteen states, were born and brought up in the atmosphere of the Common Law and thought and spoke in its vocabulary...when they came to put their conclusions into the form of fundamental law in a compact draft, they expressed them in terms of Common Law, confident that they could be shortly and easily understood." Exparte

Grossman, 267 U.S. 87, 108 (1925).

No limit or qualification was ever intended to be put upon the right of "assistance of counsel" in the Sixth Amendment and Appellant submits the word "counsel" was used in recognition of the Common Law right to have one's "Friends" speak for an Appellant, if he so chose. Reference to the Common Law is mandatory in a proper interpretation of the Constitution, but most particularly in a Bill of Rights. There is a preponderance of United States Supreme Court cases which uphold the position of Defendant on Interpretation of the Constitution.

"...as men whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey: the enlightened patriots who

framed our Constitution and the people who adopted it must be understood to have employed the words in their natural sense, and to have intended what they have said." Gibbons v. Ogden, 22 US 1 (1824).

And:

"In the construction of the Constitution, we must look to the history of the times, and examine the state of things existing when it was framed and adopted. 12 Wheat 354; 6 Wheat 416; 4 Peters 431-2; to ascertain the old law, the mischief and the remedy." The State of Rhode Island v. The State of Massachusetts, 37 U.S. 657 (1938).

And also in speaking further of Constitutional provisions, we find:

"We agree, it is not to be frittered away by doubtful construction, but like every clause in

every constitution, it must have reasonable interpretation, and be held to express the intention of the framers." Woodson v. Murdock, 89 U.S. 351, 369 (1874).

And further:

"The necessities which gave birth to the Constitution, the controversies which precede its formation and the conflicts of opinion which were settled by its adoption, may properly be taken into view for the purposes of tracing to its source, any particular provision of the Constitution, in order thereby, to be enabled to correctly interpret its meaning." Pollock v. Farmer's Loan and Trust Co., 157 U.S. 429, 558.

History shows conclusively that it was a common law right to be represented in court by a "friend" rather than an attorney, if one chose.

Appellant claims that right herein, which the Sixth Amendment did indeed secure, and is not subject to "revision" by the American Bar Association.

The facts are clear; the rights of the Appellant were denied in Quo Warranto proceedings in not allowing Appellant counsel of choice, as was the right of the Appellant denied in the assistance of Mr. Jarratt in the legal proceedings that lead to these Quo Warranto actions by the State.

It must now be obvious to this court that the premise and merits of the Petitioner's appeal are based on the decrees of this very court itself. Further, continued operation of these Virginia statutes continue to do injury to the Petitioner and he has not availed himself of any benefits

therefrom. Why should the Appellant or any indigents, or citizens of the State of Virginia be denied their First and Sixth Amendment rights guaranteed them by the Constitution of the United States.

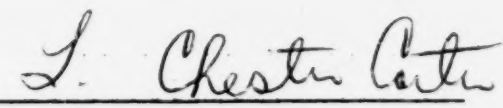
The Petitioner does not now and has never claimed any ability to practice law and has not so done. There are no clients and no procurement of funds for any such service rendered.

Virginia has imposed statutory law (1:5 Virginia Rules, Supreme Court) to enhance the interest of the Bench Bar Monopoly at the expense and deprivation of rights of her citizens, and particularly, this free man.

CONCLUSION

For these reasons, this court should note probable jurisdiction of this appeal.

Respectfully submitted,



L. CHESTER CARTER
In Propria Persona
P. O. Box 84
Stony Creek, VA 23882

APPENDIX

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 11th day of September, 1985.

L. Chester Carter, Appellant,

against Record No. 850265
Circuit Court No. 84-59

Commonwealth of Virginia, Appellee.

From the Circuit Court of Sussex County.

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach Clerk

By: Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF SUSSEX COUNTY

COMMONWEALTH OF VIRGINIA,

Petitioner,

v. No. 84-59

L. CHESTER CARTER,

Defendant.

ORDER

This cause was tried without a jury on November 13, 1984, upon the verified petition of the Commonwealth of Virginia, at which time evidence was taken and argument was heard from counsel for the Commonwealth and the defendant, pro se.

Upon consideration of the evidence and arguments, and it appearing to the Court that the defendant did engage in the practice of law, without a license, in contravention of the Rules of Court, Part VI, § 1, and in violation of Unauthorized Prctice Rule 1 (UPR 1-101)

and Unauthorized Practice Considerations 1-2 (UPL 102), it is hereby ORDERED that L. Chester Carter be, and is hereby permanently enjoined from engaging in acts which constitute the unauthorized practice of law in Virginia, and that the Commonwealth recover from L. Chester Carter her costs and attorney's fees in the sum of Six Hundred Thirty-eight Dollars and 00/100 ($638.00), expended in prosecuting this matter. The Clerk is directed to send a certified copy of this Order to L. Chester Carter and Neil A. G. McPhie, Assistant Attorney General.

ENTER: _____
Judge

DATE: _____

I ask for this:

Neil A. G. McPhie
Assistant Attorney General
Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219

Seen and ~~objected~~ Strongly to:

L. Chester Carter, pro se
Route 2, Post Office Box 74
Stony Creek, Virginia 23882

227-P323

A COPY TESTE:
GARY M. WILLIAMS, CLERK
By_____D.C.

IN THE SUPREME COURT OF THE

STATE OF VIRGINIA

L. CHESTER CARTER,

Appellant,

Record No. 850265

v.

Circuit Court No. 84-59

COMMONWEALTH OF VIRGINIA,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that L. Chester Carter, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Virginia, refusing to hear the petition for appeal, entered in this action on the 11th day of September, 1985.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

L. Chester Carter,
Appellant
In Propria Persona

PROOF OF SERVICE

I hereby certify that a true copy of this document was mailed by United States mail, postage prepaid, on the 23 day of November, 1985 to the counsel for the Appellee, Neil A. G. McPhie, Assistant Attorney General, 101 North Eighth Street, Richmond, Virginia 23219.

L. Chester Carter

CERTIFICATE OF SERVICE

I, L. Chester Carter, do hereby certify that a true and correct copy of this document was mailed postage prepaid by United States mail to the counsel for Appellee:

Gerald L. Baliles
Attorney General of Virginia

Guy W. Horlsey, Jr.
Senior Assistant Attorney General

Neil A. G. McPhie
Assistant Attorney General

Office of the Attorney General
101 North Eighth Street
Richmond, Virginia 23219
(804) 786-3809

Dated this 30 day of December, 1985.

L. Chester Carter

L. Chester Carter
In Propria Persona
P. O. Box 84
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(804) 246-2440